Supreme Court, U.S.
FILED

No. 031626 MAY 28 2004

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In The

Supreme Court of the United States

PETER D. BARNA,

Petitioner,

v.

ANGELA C. BARNA,

Respondent.

On Petition For Writ Of Certiorari To The Florida Fourth District Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

JOHN N. BUSO, P.A.
1645 Palm Beach Lakes Boulevard
Suite 450
West Palm Beach, Florida 33401
Telephone: (561) 689-5900
Facsimile: (561) 689-9725

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether Section 57.105, Florida Statutes, as applied in this case by the trial court, and affirmed on appeal, operated to deny the Appellant his constitutional and fundamental right to access justice in order to challenge the constitutionality of the alimony laws via a declaratory judgment proceeding under the state constitution, because of its fees shifting provision that was improperly applied against his counsel.

PARTIES TO THE PROCEEDINGS BELOW

Appellant in the Florida Supreme Court filing was Peter Barna. His attorneys at the trial court level were Stephen N. Martyak and Valentin Rodriguez. Mr. Barna appealed to the Fourth District Court of Appeal and to the Florida Supreme Court.

Appellee was Nancy L. Barna, the former spouse of the Petitioner. At trial she was represented by Philip Chopin.

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Barna v. Barna, Case No. SC 03-1596 (Fla. March 2, 2004)

JURISDICTION

The judgment of the Florida Supreme Court was entered on March 2, 2004, declining to accept jurisdiction and denying the petition for review. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

In addition to the parties named in the caption, pursuant to Rule 29.4(c) Petitioner identifies the following parties which may have an interest in the outcome of the petition: Charlie Crist, Office of the Attorney General of the State of Florida, and the Honorable James Carlisle.

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides: " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

As detailed below, there is cause for this Court to review the decision in *Barna v. Barna*, Case No. SC 03-1596 (Fla. March 2, 2004) and *Barna v. Barna*, 850 So.2d 603 (Fla. 4th DCA 2003), because that opinion regarding

the applicability of fee shifting provisions operated to effectively deny Appellant access to courts to challenge the constitutionality of a state alimony law. Appellant Peter Barna was the Respondent in a Dissolution of Marriage proceeding in the Fifteenth Judicial Circuit Court of Florida. He subsequently filed a motion in the family court for a declaratory judgment regarding the constitutionality of Florida alimony provisions under the state constitution's right to privacy and equal protection. The trial court denied the relief and sanctioned him and his attorneys for what it characterized as a "frivolous" constitutional argument. However, there had been no reported decision in the state regarding the precise constitutional issue raised by Appellant. As punishment for the allegedly frivolous argument, the court imposed sanctions under Section 57.105, Florida Statutes. The Fourth District Court of Appeal affirmed the decision with the following excerpted opinion:

> Appellant raises several issues on appeal. We affirm on all issues and write only to address the court's award of fees pursuant to section 57.105, Florida Statutes.
>
> In the context of dissolution proceedings, appellant asserted his constitutional challenge to the alimony statutes. While appellant represented to the court that his actions did not require the former wife's participation, the trial court found otherwise. In addition, the trial court found that appellant's counsel's attack on the alimony statutes was irrelevant, frivolous, and brought only to advance the cause of an unrelated client, the Alliance for Freedom from Alimony, Inc. As a result, the court awarded fees to the former wife for pursuing frivolous litigation brought without regard for the cost burden to the former wife.

> Under section 57.105, Florida Statutes, the court may award fees to the prevailing party if at the time a claim or defense is presented to the court, the losing party knows or should know that it "[w]as not supported by the material facts necessary to establish the claim or defense" or "[w]ould not be supported by the application of then-existing law to those material facts." § 57.105(1)(a), (b), Fla. Stat. (2002); *see also Read v. Taylor*, 832 So.2d 219 (Fla. 4th DCA 2002). Based on the facts in this case, the trial court properly awarded fees pursuant to section 57.105, Florida Statutes. *See, e.g., Morrone v. State Farm Fire and Cas. Ins. Co.*, 664 So.2d 972 (Fla. 4th DCA 1995) (sua sponte awarding appellate fees pursuant to section 57.105, Florida Statutes); *see also Smyth v. Smyth*, 417 So.2d 821 (Fla. 4th DCA 1982) (sua sponte awarding appellate fees pursuant to section 57.105, Florida Statutes).

Barna, 850 So.2d at 604. The Florida Supreme Court declined to accept jurisdiction on March 2, 2004.

REASONS FOR GRANTING THE WRIT

Whether Section 57.105, Florida Statutes, as applied in this case by the trial court, and affirmed on appeal, operated to deny the Appellant his constitutional and fundamental guarantee of right to access courts and justice in order to challenge the constitutionality of the alimony laws under the state constitution, because of its fees shifting provision that was improperly applied

Petitioner argues that there exists a "compelling reason" warranting review of the state court decision in

Barna v. Barna, 850 So.2d 603 (Fla. 4th DCA 2003). In effect, the state court's decision pulls the plug on access to justice and the court system to redress grievances, particularly those of a constitutional nature. The trial court found that the issue raised by Appellant was frivolous, but gave no legal support for that conclusion, especially because this was the *first* attempt to raise this constitutional issue. Appellant's constitutional challenge is no more frivolous that the challenge made in *Planned Parenthood of Southwestern Pa. v. Casey*, 505, U.S. 833, 845-53 (1992) (discussing a woman's right to terminate her pregnancy as a fundamental right), or that made in *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261, 278-85 (1990) (discussing the right to die as a fundamental right), or even the recently reversed challenge in *Bowers v. Hardwick*, 478 U.S. 186, 190-96 (1986) (discussing the right of homosexuals to engage in consensual sodomy as not a fundamental right). Indeed, this Court is certainly aware that our federal constitution promotes the access to the court system without impermissible chilling effects. For example, had the petitioners in *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472 (2003), been subject to similar sanctions in the Texas trial and appellate courts, there may not have been a chance for this Court to overrule its precedent in *Bowers, supra*.

More importantly, this is an unsettled area of law. The Court is aware of *Bounds v. Smith*, 430 U.S. 817 (1977), which affirms the fundamental constitutional right of access to the courts, in the context of requiring prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries. *See also Doe v. Puget Sound Blood Center*, 819 P.2d 370 (Wash. 1991) ("That justice which is to be administered openly is not an abstract theory of constitutional law, but rather is the bedrock foundation

upon which rest all the people's rights and obligations."). However, this Court has also stated that fees cannot be assessed imprudently in civil cases, otherwise unweary plaintiffs are hindered in their access to redress grievances.

The state court clearly failed to analyze whether the Petitioner's constitutional challenge was an "honestly debatable question of law" and hence subject to attorneys' fees sanctions under Section 57.105, Florida Statutes. First and foremost, the effect of the state court's opinion will very likely be to deny access to the courts for litigants hoping to avail themselves of the protections of state constitutional provisions, or any other right (state or federal) that might be subject to sanctions under Section 57.105, Florida Statutes. There is absolutely no reported decision directly on point regarding the applicability of the privacy amendment to the Florida alimony scheme; accordingly, the challenge could not have been frivolous as a matter of law.

This Court should recognize the import of its decision in *Christiansburg Garment Co. v. EEOC,* 434 U.S. 412 (1978), where it held that a defendant in an action brought under Title VII of the Civil Rights Act of 1964 may recover attorney's fees from the plaintiff ***only if*** a district Court finds "that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." *Id.*, at 421 (emphasis added). This concept was expanded in *Hughes v. Rowe,* 449 U.S. 5 (1980), when this Court held that "although arguably a different standard might be applied in a civil rights action under 42 U.S.C. § 1983, we can perceive no reason for applying a less stringent standard." This Court opined that, for due process reasons, the "plaintiff's action must

be meritless in the sense that it is groundless or without foundation. The fact that a plaintiff may ultimately lose his case is not in itself a sufficient justification for the assessment of fees." *Rowe*, 449 U.S. at 14.

Indeed, the U.S. Supreme Court stated in *Christiansburg*:

> To take the further step of assessing attorney's fees against plaintiffs simply because they do not finally prevail would substantially add to the risks inhering in most litigation and *would undercut the efforts of Congress to promote the vigorous enforcement of the provisions of Title VII.* Hence, a plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so.

434 U.S. at 422 (emphasis added).

The state court's decision is also contrary to Florida precedent regarding fee shifting, such as that expressed in *Boyce v. Cluett*, 672 So.2d 858 (Fla. 4th DCA 1996): " . . . an award of attorneys' fees [under 57.105] is not appropriate against a plaintiff so long as the complaint alleges some justiciable issue."

Accordingly, Appellant is requesting this Court to review the underlying fee shifting decision because it operated completely and wholly to chill his right of access to the court systems in order to change an existing law that is arguably in violation of the state's own constitutional right to privacy and equal protection. The fact that Appellant's trial counsel were also sanctioned with fees serves not only to chill plaintiffs, but also their counsel, for

fear that their litigation of novel and new constitutional ideas will backfire. This is not what the framers intended when they wrote of due process in the Fourteenth Amendment. Had the parties and their lawyers in *Lawrence, supra*, been subject to the same due process impediments imposed by the Florida courts, this Court would not have been able to reconsider its previous decision in *Bowers*, which forever changed this Court's concept of liberty. The underlying cause raised by the Appellant in the state court was a liberty challenge regarding the imposition of alimony under Florida law. The decision appealed has effectively given Florida citizens little hope of further access to its constitutionally-mandated court systems, and has also hindered lawyers in their pursuit of novel causes.

CONCLUSION

For the reasons given above, the petition should be granted because the case is unique and involves important due process concerns regarding the right to access courts to seek redress of grievances, both as a matter of constitutional right for plaintiffs and the lawyers who represent them.

Respectfully submitted,

JOHN N. BUSO, P.A.
1645 Palm Beach Lakes Boulevard
Suite 450
West Palm Beach, Florida 33401
Telephone: (561) 689-5900
Facsimile: (561) 689-9725

Counsel for Petitioner

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 2003

PETER D. BARNA,

Appellant,

v.

ANGELA C. BARNA

Appellee

CASE NO. 4D02-3332

Opinion filed July 9, 2003

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; James T. Carlisle, Judge; L.T. Case No. CD 00-534 FZ.

Stephen N. Martyak, Palm Beach Gardens, and Valentin Rodriguez of Valentin Rodriguez, P.A., West Palm Beach, for appellant.

No brief filed for appellee.

SHAHOOD, J.

Appellant's, Peter Barna, marriage was dissolved by final judgment entered on January 31, 2001. Pursuant to the final judgment, appellant was to pay child support and permanent alimony. Thereafter, he filed a "Motion for a Declaratory Judgment, Temporary Injunctive Relief, Permanent Injunctive Relief, Recusal and Certiorari Because the Postdissolution Permanent Spousal Support Provisions of Florida Statutes Chapter 61 Violate the Florida Constitution." Following a hearing, the court

entered an order denying appellant's motion and reserving jurisdiction to hear the former wife's pending motion for attorney's fees and costs. The court later granted the former wife's motion for fees. That order is the subject of this appeal.

Appellant raises several issues on appeal. We affirm on all issues and write only to address the court's award of fees pursuant to section 57.105, Florida Statutes.

In the context of dissolution proceedings, appellant asserted his constitutional challenge to the alimony statutes. While appellant represented to the court that his actions did not require the former wife's participation, the trial court found otherwise. In addition, the trial court found that appellant's counsel's attack on the alimony statutes was irrelevant, frivolous, and brought only to advance the cause of an unrelated client, the Alliance for Freedom from Alimony, Inc. As a result, the court awarded fees to the former wife for pursuing frivolous litigation brought without regard for the cost burden to the former wife.

Under section 57.105, Florida Statutes, the court may award fees to the prevailing party if at the time a claim or defense is presented to the court, the losing party knows or should know that it "[w]as not supported by the material facts necessary to establish the claim or defense" or "[w]ould not be supported by the application of then-existing law to those material facts." §57.105(1)(a),(b), Fla. Stat. (2002); *see also Read v. Taylor*, 832 So. 2d 219 (Fla. 4th DCA 2002). Based on the facts in this case, the trial court properly awarded fees pursuant to section 57.105, Florida Statutes. *See, e.g., Morrone v. State Farm Fire and Cas. Ins. Co.*, 664 So. 2d 972 (Fla. 4th DCA 1995) (sua

sponte awarding appellate fees pursuant to section 57.105, Florida Statutes); *see also Smyth v. Smyth*, 417 So. 2d 821 (Fla. 4th DCA 1982) (sua sponte awarding appellate fees pursuant to section 57.105, Florida Statutes).

AFFIRMED.

KLEIN and GROSS, JJ., concur.

NOT FINAL UNTIL DISPOSITION OF ANY TIMELY FILED MOTION FOR REHEARING.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

August 14, 2003

CASE NO.: 4D02-3332
L.T. No.: CD 00-534 FZ

PETER D. BARNA v. ANGELA C. BARNA
Appellant/Petitioner(s), Appellee/Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed July 23, 2003, for rehearing is hereby denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Valentin Rodriguez
Angela C. Barna
Stephen N. Martyak
Stacy M. Schwartz
Philip M. Chopin

cd

/s/ Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk [SEAL]
Fourth District Court of Appeal

IN THE CIRCUIT
COURT OF THE
15th JUDICIAL
CIRCUIT IN AND
FOR PALM BEACH
COUNTY, FLORIDA

FAMILY DIVISION

CASE No:
CD-00-534 FZ

IN RE: THE MARRIAGE OF ANGELA C. BARNA,

Petitioner/Wife

and,

PETER D. BARNA,

Respondent/Husband. /

ORDER DENYING MOTION FOR DECLARATORY RELIEF

THIS CAUSE having come before the Court on the Former Husband's Motion for Declaratory and other relief, hearing having been held this 15th day of July, 2002, the Court having considered the argument and pleadings before the Court, and the Court being otherwise advised of the premises hereof, it is,

ORDERED and ADJUDGED as follows:

1.) The Former Husband's Motion for Declaratory and other relief is DENIED.

2.) The Court reserves jurisdiction to hear the Former Wife's pending motion for attorney's fees and costs as previously noticed.

DONE and ORDERED at Delray Beach, Florida this 11th day of July, 2002.

/s/ JUDGE JAMES T. CARLISLE
CIRCUIT COURT JUDGE

cc:
Philip Chopin, Esq., 222 Lakeview Avenue, Suite 1150, West Palm Beach, Florida 33401.
Stephen N. Martyak, Esquire, 3355 Burns Road, Suite 306, Palm Beach Gardens, Florida 33410
Valentin Rodriguez, Esquire, 318 Ninth Street, West Palm Beach, Florida 33401

IN THE CIRCUIT COURT OF THE
15th JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

FAMILY DIVISION

CASE No: CD-00-534 FZ

IN RE: THE MARRIAGE OF
ANGELA C. BARNA,

Petitioner/Wife,

and,

PETER D. BARNA,

Respondent/Husband.
_____/

ORDER AWARDING ATTORNEY'S FEES & COSTS

THIS CAUSE having come before the Court on the Former Wife's Motion for Attorney's Fees, hearing having been held this 31st day of July, 2002, and the Court being otherwise advised of the premises hereof, it is,

ORDERED and ADJUDGED as follows:

1.) The Former Wife's Motion is GRANTED. The Court finds that the former Wife is entitled to an award of her reasonable attorney's fees and costs from the Former Husband and his counsels of record, resulting from the motion for declaratory relief. The Former Husband had no legitimate interest in pursuing any actual financial relief, but rather allowed his "case" to be used solely as a vehicle for the purposes of advancing the cause of the Alliance for Freedom from Alimony, Incorporated, and its pending appeal against the State of Florida. While counsel for the Former Husband stated at hearing on July 15, 2002 that

the issue had nothing to do with the Former Wife and did not require her participation, this is totally contrary to the relief requested in the pleadings. Furthermore, counsel for the Former Husband/Alliance for Freedom knowingly pursued this course of action despite the total lack of relevance to the Barna case, and with total disregard to the requirements of law and the burden of same to the Court and the Former Wife, solely for advancing the cause of an unrelated client. As such, counsel shall be jointly and severally liable with the Former Husband for the Former Wife's reasonable attorney's fees and costs as a sanction for pursuit of such total bad-faith litigation.

3.) [sic] Based on the attorney fee statements submitted at hearing, the testimony of counsel and the review of the Court file, the Court finds that the Former Wife incurred $1,700.00 in reasonable attorney's fees, representing eight and one-half hours at $200.00 per hour. Steve Martyak, Esquire, and Valentin Rodriguez, Esquire, are hereby ordered, jointly and severally, to remit the total sum of $1,700.00 to Philip M. Chopin, Esquire, as reasonable attorney's fees and costs, no later than five (5) days from the date of this Order.

4.) The Court reserves jurisdiction of this cause for all purposes as are proper at law.

DONE and ORDERED at Delray Beach, Florida this ___ day of August, 2002.

/s/ James Carlisle
CIRCUIT COURT JUDGE

cc:
Philip Chopin, Esq., Attorney for Former Wife, 222 Lakeview Avenue, Suite 1150, West Palm Beach, Florida 33401.
Stephen N. Martyak, Esquire, Attorney for Former Husband, 3355 Burns Road, Suite 306, Palm Beach Gardens, Florida 33410.
Valentin Rodriguez, Esquire, Attorney for Former Husband, 318 Ninth Street, West Palm Beach, Florida 33401.

Supreme Court of Florida

TUESDAY, MARCH 2, 2004

CASE NO.: SC03-1596
Lower Tribunal No.: 4D02-3332

PETER D. BARNA vs. ANGELA C. BARNA

Petitioner(s) Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d).

ANSTEAD, C.J., and WELLS, PARIENTE, LEWIS and BELL, JJ., concur.

A True Copy
Test:

/s/ Thomas D. Hall [SEAL]
Thomas D. Hall
Clerk, Supreme Court

mc
Served:

HON. EDWARD H. FINE, CHIEF JUDGE
VALENTIN RODRIGUEZ, JR.
ANGELA C. BARNA
HON. MARILYN BEUTTENMULLER, CLERK
HON. CHARLES J. CRIST, JR.
HON. DOROTHY H. WILKEN, CLERK